Supreme Court, U.S.
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No. 93-1977

In The

Supreme Court of the United States

OCTOBER TERM, 1993

MARY WILLIAMS AND JAMES WILLIAMS,

Petitioners,

v.

RICHMOND COUNTY, GEORGIA, SHERIFF CHARLES WEBSTER, CAPTAIN RAY MYERS, TINA JOHNSON, JIM SHEPPARD, AND UNIVERSITY HEALTH SERVICES INC. d/b/a UNIVERSITY HOSPITAL AMBULANCE SERVICE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a law enforcement officer can be held liable under 42 U.S.C. Section 1983 for strategic decisions in executing a lawful order of a state court which resulted in a tragic but justifiable shooting of the suspect.

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STATEMENT OF THE CASE

In order for this Honorable Court to appropriately determine whether this case is worthy of its consideration, a brief factual narrative as well as a brief procedural history of this case is needed. Initially it should be pointed out that the petitioner's comparison of this case to the recent tragedy in Waco, Texas is to say the least a gross exaggeration.

This case began on November 16, 1989, when the two brothers of the petitioner Mary Williams submitted affidavits to the Judge of the Probate Court of Richmond County seeking an order having their sister apprehended by law enforcement officials and committed to the Georgia Regional Hospital. In the affidavits, her brothers swore that their sister presented a substantial risk of imminent harm to herself and others.

Subsequent to the order being issued, two deputies from the Richmond County Sheriff's Department arranged to meet her brothers at their residence to allow them entry into the house in order to arrest and transport petitioner to the hospital. Prior to the officers arriving on the scene, the petitioner Williams assaulted one of her brothers with a brick.

Upon the officers' arrival, Mrs. Williams had locked herself in a back bedroom of the house. She continually cursed the officers and threatened to shoot them. Eventually the door was opened, and after a discussion with the petitioner, she produced a butcher knife and attempted to stab one of the officers. The officer escaped with only a minor injury. For the next five hours Mrs. Williams

remained in the bedroom with the door locked and barricaded with furniture. During this approximate 4 or 5 hour time interval, the Sheriff's Department did everything humanly possible to talk Mrs. Williams into coming out of the room and voluntarily going to the hospital. Several officers spoke to her, her brothers spoke to her, the Sheriff's Department trained hostage negotiator talked to her, and the department even arranged for her minister to come to the house and speak to her. However all these efforts were to no avail.

At some point during this ordeal, the Richmond County Sheriff's Department SWAT Team was called to the scene to wait in the event they were needed. After approximately 5 hours, the department's hostage negotiator reported to Capt. Wilhelm who was on the scene and Chief Deputy Ronald Strength who was at the Sheriff's Department headquarters that, in his opinion, Mrs. Williams was not coming out of the room voluntarily. At that time Chief Deputy Strength instructed Capt. Myers, who was in charge of the SWAT Team, to use the SWAT Team to remove Mrs. Williams from the house. By this time the SWAT Team had been on the scene for approximately 2 hours. After much discussion, the SWAT Team came up with a plan to remove Mrs. Williams from the room which in the opinion of the officers involved the least risk to the officers as well as to Mrs. Williams. The plan was to put tear gas in the window of the bedroom where Mrs. Williams was barricaded, to lock all the doors in the hallway leading to the bedroom, and place a coffee table immediately outside the door of the bedroom. The hope was that Mrs. Williams being disoriented by the tear gas would come out of the room, trip over the coffee table

and the officers would be able to disarm her and handcuff her with little or no resistance or struggle. However in the event that she eluded the coffee table, the members of the SWAT Team who were placed inside the house were instructed to use their batons to attempt to disarm Mrs. Williams and to only use deadly force as a last resort.[1]

When the tear gas was placed in the back bedroom, Mrs. Williams removed the barricade, opened the door, and eluded the coffee table. She immediately zeroed in on the first officer she saw and attacked him with the knife. The officer in question was moving backward while using his baton to block her thrusts with the knife. When it appeared that the officer had stumbled and was about to be killed by Mrs. Williams, Deputy Steve Buchanan, a member of the SWAT Team fired one round from his revolver striking Mrs. Williams and ending the ordeal.

On May 9, 1990, the petitioners filed this civil rights action with pendant state law claims in the United States

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[1] Contrary to the representations of the petitioner in their petition, Capt. Ray Myers did not devise this plan within minutes of being on the scene. Capt. Myers did not make the decision to utilize the SWAT Team to remove Mrs. Williams from the bedroom but was ordered to do so by Chief Deputy Strength after 5 hours of attempting to talk Mrs. Williams out of the bedroom. Most importantly, contrary to the representations of the petitioners in the petition, Capt. Myers did not tell the SWAT Team to shoot Mrs. Williams if she tried to use the knife. In fact he specifically ordered his officers to use the batons to attempt to disarm Mrs. Williams and to only use their firearms as a last resort.

District Court for the Southern District of Georgia. Initially Deputy Steve Buchanan of the Richmond County Sheriff's Department, who fired the shot that struck Mrs. Williams, was named as a defendant. After a little over a year of discovery, the petitioners herein, apparently realizing that the shooting of the petitioner Mary Williams by Deputy Buchanan was justifiable and did not constitute a violation of her civil rights dismissed Buchanan with prejudice and added Capt. Ray Myers as a defendant pursuant to a consent order. The petitioners' theory of the case then changed. Their contention then was that the strategic decisions made by Capt. Myers in utilizing the SWAT Team constituted an unreasonable seizure under the 4th Amendment.

However, the District Court disagreed with the petitioners and on August 26, 1992, the District Court granted the defendants' motions for summary judgment on all federal claims and dismissed without prejudice all pendant state law claims. The District Court held that the mere fact that the SWAT Team was deployed did not render the actions of the Sheriff's Department objectively unreasonable under the circumstances. The District Court further held that the defendants' attempts to resolve the situation were not objectively unreasonable under all the circumstances as a matter of law. *Williams v Richmond County, Georgia,* 804 F.Supp. 1561, 1570 (S.D. Ga. 1992)[2]

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[2] The District Court did not apply an 8th Amendment standard in this case as represented by petitioners. The District Court merely analogized the factual situation in this case to the factual situation in *Whitley v Albers,* 475 U.S. 312, 106 S.Ct. 1078 (1986). *Williams v Richmond County, Georgia,* 804 F.Supp. 1561, 1569-70 (S.D. Ga. 1992).

Thereafter an appeal was taken by the petitioners to the 11th Circuit Court of Appeals. After briefing the case to the Court of Appeals and prior to oral argument, the 11th Circuit Court of Appeals decided the case of *Wilson v Northcutt*, 987 F.2d 719 (11th Cir, 1993), in which the 11th Circuit held that the plaintiff was not seized by the defendant law enforcement officers in a factual situation very similar to the case at hand. Thereafter the respondents petitioned the 11th Circuit Court of Appeals for permission to file a supplemental brief concerning the issue as to whether a 4th Amendment seizure occurred of Mrs. Williams by Capt. Myers. The 11th Circuit granted leave to file the supplemental brief as well as allowing the petitioners to file a reply brief on the same issue. On March 8, 1994, the 11th Circuit Court of Appeals issued a per curiam decision pursuant to 11th Circuit Rule 36-1 affirming the district court's order.[3]

ARGUMENT AND CITATION OF AUTHORITY

I. The petitioner's petition does not meet the requirements under Rule 10 for consideration by this Court.

The respondents herein respectfully submit to this Court that this case does not meet the requirements of Rule 10 of the Rules of the Supreme Court of the United States for granting a petition for a writ of certiorari. This case is neither a case of first impression nor does it

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[3] 11th Circuit Rule 36-1 provides for affirmance without opinion when the Court determines that a summary judgment is supported by the record and an opinion would have no precedential value.

represent a legal issue in which there is a conflict among the Circuit Courts of Appeals.

Since it was clear that Deputy Steve Buchanan, who actually shot the petitioner Mary Williams, did not commit a constitutional violation against Mrs. Williams pursuant to this Court's decisions in *Tennessee v Garner*, 471 U.S. 1, 105 S.Ct. 1694 (1985) and *Graham v Conner*, 490 U.S. 386, 109 S.Ct. 1865 (1989), the petitioners focus their attack upon Capt. Ray Myers who was in charge of the SWAT Team. However Capt. Ray Myers did not make the decision to utilize the SWAT Team but merely followed the orders of his superiors in utilizing the SWAT Team. Capt. Myers merely made the decision as to how the SWAT Team was going to remove Mrs. Williams from the bedroom once they were ordered to do so. In effect, the petitioners contend that the respondent Myers violated Mrs. Williams rights under the 4th Amendment by using improper strategic methods of extracting her from the bedroom.

However several Circuit Courts of Appeals have dealt with the issue where an officer's tactics in responding to a particular situation is questioned. Each time presented with this issue, the Circuit Courts of Appeals have ruled contrary to the arguments of petitioners.

The following cases all held in one form or another that the violation of standard police procedures or universally accepted police practices by a law enforcement officer does not render an otherwise lawful shooting a constitutional violation. *Young v City of Killeen, Texas*, 775 F.2d 1349 (5th Cir, 1985); *Fraire v City of Arlington*, 957 F.2d 1268 (5th Cir, 1992); *Greenidge v Ruffin*, 927 F.2d 789

(4th Cir, 1991); *Smith v Freeland*, 954 F.2d 343 (6th Cir, 1992).

To the knowledge of the undersigned counsel, there are no cases which hold contrary to the above referenced circuit court opinions.

In an effort to peak this court's interest in this case, the petitioners contend that the lower court's decision in this case turned on the moment that the petitioner Mary Williams was "seized". In support of this the petitioner states that "the Trial Court's position is that the seizure began and ended with the justified, split second firing of the deputy's gun . . . ". (Petition for Writ of Certiorari at page 9) However that is simply not the case. The Trial Court's decision did not even discuss when the seizure of Mary Williams began or concluded. What the Trial Court stated in support of its decision holding that Capt. Myers did not commit a 4th Amendment unreasonable seizure of Mrs. Williams was as follows:

> It cannot be said that the Richmond County officers' attempts to resolve the situation were objectively unreasonable means in circumstances where Mrs. Williams had already threatened and attempted to use deadly force. **Only after she advanced with a weapon toward an officer at close quarters was potentially deadly force finally applied against her.** Where officers acted pursuant to the request of a family member who voluntarily admitted the officers into the home, and officers observed the plaintiff's conduct to be irrational – even violent – and took her into custody using no more force that the circumstances warranted, there has been no deprivation of the plaintiff's federally secured

rights. *Williams v. Richmond County, Georgia,* 804 F.Supp. 1561, 1570 (S.D. Ga. 1992) (emphasis not added)

Therefore the Trial Court's decision did not turn on the issue of when Mrs. Williams was seized or if she was seized. Although that particular issue was addressed by supplemental brief to the 11th Circuit of the Court of Appeals, since there is no opinion issued by the 11th Circuit Court of Appeals, it cannot be said that the decisions below turned on when Mrs. Williams was seized.

The respondents herein submit to this Honorable Court that when and by whom Mrs. Williams was seized only determines the standard to be applied to the facts of this case, i.e., a 4th Amendment objectively unreasonable standard or a "shock the conscience" 14th Amendment substantive due process standard. Utilizing either standard, the respondents were entitled to judgment in their favor. This issue will be discussed more fully herein.

II. The District Court was correct in granting summary judgment to the respondents and the 11th Circuit Court of Appeals was correct in affirming said order.

The respondents respectfully submit to this Court that the order of the District Court granting summary judgment to these defendants was entirely correct and legally appropriate and the 11th Circuit Court of Appeals was correct in affirming the District Court.

Although the petitioners in their petition to this Honorable Court place great weight on the fact that their expert witnesses testified that the respondent Myers

acted improperly, upon close examination there were very minute differences between the opinions of petitioners' experts and the actions of the respondent.

The expert witnesses of petitioner found fault with the commander of the SWAT Team, Capt. Ray Myers, making the decision to utilize the SWAT Team to deal with Mrs. Williams. They opined that decision should be made by a neutral superior who is not a member of the SWAT Team. However, that is exactly what occurred in this case. Capt. Myers, the commander of the SWAT Team did not make the decision to utilize the SWAT Team. He merely approved the plan as to how the SWAT Team was going to extricate Mrs. Williams once his superiors made the decision to utilize the SWAT Team. The decision to utilize the SWAT Team was made by Chief Deputy Ronald Strength after consultation with the department's hostage negotiator and Capt. Wilhelm who were at the scene.

The petitioners experts also criticized the Sheriff's Department for not bringing in a mental health professional to talk to Mrs. Williams. However instead of a mental health professional, the Sheriff's Department brought in Mrs. Williams' minister instead. However all efforts to talk Mrs. Williams out of the locked and barricaded bedroom were to no avail even though numerous people spoke to her. The only response from Mrs. Williams was curse words and threats on the lives of the officers.

Although petitioners' experts did indicate that the SWAT Team should have waited longer, they did not give any opinion as to how long the Sheriff's Department

should have waited. The petitioners' experts further indicated that once the decision was made to use the SWAT Team to remove Mrs. Williams, the officers should have forced Mrs. Williams out of the house completely instead of merely out of the bedroom into the hall before trying to subdue her. The experts continued to testify that once she was outside and if it appeared that she was going to seriously injure one of the officers, Mrs. Williams could have been shot by a sniper utilizing a high powered rifle.

Therefore the only differences between the actions and strategies of Capt. Myers and the opinions of petitioners' experts were the use of a minister as opposed to a mental health professional and forcing Mrs. Williams out of the bedroom into the hall as opposed to completely out of the house. The respondent submits to the Court that this is insufficient to convert this action into a violation of Mrs. Williams' constitutional rights considering that she was only shot when it appeared that she was going to be successful in an effort to kill one of the officers.

When one examines the petitioners' position in this case, it is readily apparent that they advocate a position that this Court should hold that once a suspect refuses to yield to the authority of an officer and threatens deadly force if the officer attempts to execute a valid warrant, then the officer has absolutely no choice but to wait until the suspect changes his or her mind. Because, in the opinion of the petitioners, if the officer does attempt to execute the valid warrant and the suspect does resist using deadly force as promised, the officer cannot respond with deadly force because the suspect's resistance was "foreseeable". Such a position is not the law and simply cannot be the law.

In addition to the above reasons, the respondent Ray Myers submits that his liability is effectively foreclosed by this Court's decision in *City of Los Angeles v Heller*, 475 U.S. 796, 196 S.Ct. 1571 (1986).

In *Heller*, this Honorable Court held that if the individual officer did not violate the plaintiff's constitutional rights, then there can be no liability of the supervisory personnel. Since it is undisputed that Deputy Steve Buchanan who shot Williams did not inflict any unconstitutional injury upon her, then it logically follows that no other person or entity can be liable under a civil rights theory for petitioner's injuries. The District Court noted in its order granting summary judgment to these respondents the undeniable conclusion that Steve Buchanan did not violate Mrs. Williams constitutional rights. *Williams v Richmond County, Georgia, supra* at page 1570, fn. 5. The respondents also submit to this Court that any actions or omissions on behalf of Capt. Myers cannot be the "moving force" behind any alleged constitutional violation of Mrs. Williams. See generally *City of Canton, Ohio v Harris*, 109 S.Ct. 1197 (1989). After all, it was not Capt. Myers' actions which caused Deputy Buchanan to shoot Mrs. Williams. It was the actions of Mrs. Williams in attempting to kill a law enforcement officer which resulted in her being shot.

With regard to the "seizure" issue as eluded to in the preceding section of this brief, the respondents herein relied below in part on the recent decision of the 11th Circuit in *Wilson v Northcutt*, 987 F.2d 719 (11th Cir, 1993). In Wilson, officers were attempting to serve a bench warrant on plaintiff's decedent when she locked herself in a bathroom. The officers gained entry to her residence

by way of an open window and after determining she was in the bathroom attempted to force their way inside to arrest her. In response, plaintiff's decedent committed suicide with a firearm. The 11th Circuit Court of Appeals relying upon this Court's decision in *California v Hodari D.*, 111 S.Ct. 1547 (1991), held that the officers did not "seize" the plaintiff's decedent within the meaning of the 4th Amendment. Wilson at page 721-22. The Court then analyzed the case under a 14th Amendment substantive due process "shock the conscience" standard as set out in *Rochin v California*, 342 U.S. 165, 72 S.Ct. 205 (1952).

The respondents argued in the 11th Circuit that just as the plaintiff's decedent in Wilson was not seized, Mary Williams was not seized by the actions of Capt. Myers and therefore the case should be analyzed under a "shock the conscience" standard under the 14th Amendment.

However the decision of the District Court and apparently the decision of the 11th Circuit Court of Appeals did not turn on this issue. In any event, the respondent submits that the District Court was entirely correct in granting summary judgment to this respondent under either an "objectively unreasonable" standard under the 4th Amendment or a "shock the conscience" standard under the 14th Amendment.

The actions of Capt. Ray Myers did not violate any constitutional right of the petitioner Mary Williams. Capt. Ray Myers merely responded to the scene at the request of his superiors. After waiting several hours with his SWAT Team, while numerous efforts were taken to convince Mrs. Williams to come out voluntarily, he was

ordered to utilize the SWAT Team to remove Mrs. Williams. Should Capt. Myers have disregarded the order and waited longer in the hope that she would have voluntarily surrendered? It must be remembered that Mrs. Williams' brothers had both sworn in affidavits before the Probate Court that she presented not only a risk to others but also to herself. Waiting any longer could have resulted in a suicide just as the *Wilson* case resulted in a suicide. See *Taylor v Watters,* 655 F.Supp. 801, 807 (E.D. Mich. 1987) However, that is all speculation and it was not Capt. Myers who made that decision. He was ordered to use the SWAT Team to remove Mrs. Williams. Once he was ordered to do so, a plan was devised that under the circumstances would result in the least risk of harm not only to Mrs. Williams but also to the officers. All the officers with the SWAT Team were instructed to use their batons in an effort to disarm Mrs. Williams. In fact, the baton was used in an effort to disarm Mrs. Williams and it was only when it appeared the officer was going to fall and be killed by Mrs. Williams, when the injury producing shot was fired.

It is largely undisputed that all officers with the SWAT Team who were inside the house risked their life in an effort to carry out a lawful order of a state court to arrest and commit Mrs. Williams. The officer who was blocking the blows of Mary Williams could easily have been seriously injured or killed.

Even utilizing the strategies of plaintiffs' experts, it is just as likely that Mrs. Williams would have been shot but by a sniper with a high powered rifle instead of by Deputy Buchanan. It should also be pointed out that the

experts that petitioners relied upon were not their original experts. A previously employed expert of plaintiff was deposed in this case. That particular expert opined that the officers should have knocked down the door of the bedroom, stormed the room and taken Mrs. Williams as opposed to forcing her outside the room. This particular expert withdrew from the case shortly after his deposition and two new experts were hired by the petitioners. It is therefore apparent that there was even a dispute as to the appropriate strategies among the petitioners' paid experts. There were probably a multitude of different ways this situation could be handled. Simply because a well reasoned plan went awry is not sufficient to impose civil rights liability upon Capt. Myers.[4]

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[4] Contrary to the representation of petitioners in their petition, the Court in *Kjorlie v Lundin*, 765 F.Supp. 671 (D. Kan. 1991), did not hold that the mere show of force by a SWAT Team, even without physical contact or injury, can give rise to a cause of action under 42 U.S.C. Section 1983. The Court in *Kjorlie*, merely ruled upon the 11th Amendment immunity and qualified immunity of the state defendants and did not address the issue represented by petitioners. (See page 10 of petition for writ of certiorari).

CONCLUSION

For the within and foregoing reasons, these respondents respectfully request this Court to deny the petitioners' petition for a writ of certiorari.

Respectfully submitted this 24th day of June, 1994.

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